IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

CRL.A.No. 590 of 1999()

CC.520/1994 of ADDL.CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM

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APPELLANT/COMPLAINANT:

P.K.JOSHY, PROPRIETOR,
NAMAKAD FINANCIERS, TRIPUNITHURA.

BY ADV. SRI.M.D.SASIKUMAR

RESPONDENTS/ACCUSED & STATE:

1.MR. T.N. VISWANATHAN,
LAKSHMI SADANAM, NADAKAVU P.O.,
UDAYAMPEROOR.
PIN - 682 307.

2.STATE OF KERLA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY ADV. SRI.VARGHESE C.KURIAKOSE-R1
PUBLIC PROSECUTOR SRI. C.K.SURESH-R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO.590 OF 1999

Dated this the 30th day of May, 2007

JUDGMENT

This appeal is filed against the judgment in C.C. No.520 of 1994 on the file of the Additional Chief Judicial Magistrate's Court, Ernakulam. The complaint was filed against the first respondent herein alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. The appellant filed the complaint stating that Ext.P1 cheque issued in his favour by the first respondent - accused in discharge of a liability of Rs.7500/-, alleged to have been borrowed from the appellant, when presented to the bank for encashment was dishonoured for want of sufficient funds in the account of the first respondent. To prove the case against the first respondent, the appellant was examined as PW.1 and two other witnesses were examined as PWs.2 and 3 and Exts.P1 to P6 were produced. On the side of the defence. DWs.1 and 2 were examined and Ext.D1 was produced. On closing the evidence of the complainant, the

accused was questioned under Section 313 Cr.P.C. Denying the allegations in the complaint, the accused had stated that he had not borrowed any amount from the appellant as alleged in the complaint and that he had joined a chitty conducted by the complainant and had taken a loan of Rs.7500/- for which he had given a blank cheque as security. The accused further stated that even though the amount was repaid, the cheque in question was not returned to him, but the same was misused by the complainant for filing the present complaint. DW.1 also supported the case set up by the accused. After analysing the evidence adduced by both sides, the trial court found that the appellant failed to prove the case against the first respondent and acquitted him.

3. This Court heard the learned counsel appearing on either side. Learned counsel appearing for the appellant submits that the finding entered by the trial court is perverse and that the cheque in question was not verified by the learned Magistrate. Learned counsel also contends that the trial Magistrate went wrong in appreciating the evidence of DWs.1 and 2 to find that the case set up by the accused was more probable.

4. On going through the entire evidence, this Court is of the view that the finding entered by the trial court is based on evidence. The trial

court categorically found that the appellant - complainant failed to prove that the cheque in question was issued towards discharge of an amount borrowed by the accused - first respondent. In the above circumstances, the impugned judgment requires no interference.

The Crl. Appeal is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.APPEAL NO.590/1999

JUDGMENT

30TH MAY, 2007.